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MEMORANDUM FOR THE RECORD

SUBJECT: Missing Persons Act

REFERENCE: Memorandum for Record, 14 September 1955, Subject: Missing Persons Act - Discussions with Department of Defense.

1. The referenced memorandum reflected the agreement of the Director of Personnel, the Comptroller and the General Counsel that three points concerning the draft Missing Persons Act should be discussed with the Department of Defense for presentation to the Bureau of the Budget. These points were:

- a. Coverage
- b. Dependents
- c. Promotion

Subsequent conversations added a fourth point for consideration:

- d. Conclusiveness

2. Subsequent paragraphs cover these points one by one, indicating the Agency's initial position and the results of the conversations with Defense and the Bureau of the Budget.

3. COVERAGE:

Earlier drafts by Defense were, in our view, ambiguous and probably not sufficiently favorable in their coverage of civilian employees. This coverage is reflected in Section 1 (a) (3) of the draft (corresponding to 50 U.S.C. Appendix 1001 (a) (3) of the present temporary legislation). We recommended the following language:

"(3) Civilian officers and employees of the departments, wherever serving, except that part-time, hourly or intermittent employees who are residents at or in the

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vicinity of their places of employment shall be included only upon a determination by the head of the department concerned that the status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, within the meaning of section 2 of this Act, was the proximate result of employment by the department."

Defense subsequently recommended the following language:

"(3) Civilian officers and employees of the departments, except that the following categories of civilian officers and employees shall be covered only upon a determination by the head of the department concerned that such status is the proximate result of employment by the department:

"(1) persons who enter any status listed in section 2 of this Act within the continental limits of the United States and

"(11) persons who enter any status listed in section 2 of this Act who are residents at or in the vicinity of their places of employment in the Territories and possessions or in foreign countries and who were not living there solely as a result of their employment."

After discussions with Defense and the Bureau of the Budget, we concurred in the Defense draft. Like our draft, it provides that all officers and employees are covered (which is not the case under the present legislation). Under both drafts there are, however, two types of coverage - automatic and determined. The only difference between our drafts is in the listing of categories concerning whom an administrative determination must be made before coverage is effective. It is the view of the Bureau of the Budget that the language proposed by Defense would be more acceptable, both to the Administration and the Congress.

It is the view of this Office that the Defense draft finally concurred in will adequately serve the purposes of this Agency and that, in fact, a provision for an administrative determination may be of value in permitting the denial of coverage in certain cases where its granting is not desirable.

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4. DEPENDENTS:

The Agency proposed the following provision to Defense for incorporation in the Act:

"A dependent of any person in active service, as defined by this Act, is a 'person' under this Act for the sole purpose of determining status as provided in sections 5 and 9, and any determination under those sections by the head of the department concerned shall be conclusive on all other departments of the Government; Provided, that nothing in this section shall be construed as conferring upon any dependent any right to pay, allowances or other compensation to which not otherwise entitled."

Defense representatives stated verbally that they had no interest in the inclusion of this provision. However, the Bureau of the Budget concurred in its inclusion, and Mr. Roger Jones, Assistant Director for Legislative Reference, Bureau of the Budget, stated that he would attempt to secure Defense's concurrence.

Our purpose in including this provision is to permit a determination of status to be made in the case of dependents who may enter into a missing, captured, etc., status together with the employee, so that there may be no obstacle to the devolution of estates nor the settlement of accounts in favor of survivors.

5. PROMOTION:

The Agency had proposed no special language to cover this question but did engage in explanatory conversations with both Defense and the Bureau of the Budget. Like ourselves, Defense would be happy to see a provision permitting promotion while in a missing or captured status as well as legislation permitting accelerated promotion for a returnee. We understand, however, from the Bureau of the Budget that the President has personally expressed an objection to a provision permitting promotion prior to return because of the possible embarrassment to the Government of promoting an individual who may subsequently be found to have acted in a manner reflecting discredit on the United States. Mr. Jones stated that there would be no objection to future

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legislation permitting retroactive promotion to returnees after their return, but he felt that this could better be accomplished separately rather than as a part of the present Act.

It is the view of the Office of the General Counsel that the Director's special authorities would permit accelerated promotion of returnees, although not on a retroactive basis. Although these authorities would probably extend to the promotion of persons in a missing or captured status, their exercise for this purpose, in view of the expressed objections of the President, would probably be inappropriate.

6. CONCLUSIVENESS:

This question arose in connection with "Enoch Arden" cases. If an individual has been determined administratively to be dead and payments have been made to his survivors, what is the status of those payments if he is subsequently found to be alive? Defense made a study of this question, consulting with other Government departments that might be concerned, and a copy of that study is attached to this memorandum.

In addition, attention is directed to Section 9 of the draft Act (identical with 50 U.S.C., Appendix 1009, of the present temporary legislation):

"Payment or settlement of an account made pursuant to a report, determination, or finding of death shall not be recovered or reopened by reason of a subsequent report or determination which fixes a date of death except that an account shall be reopened and settled upon the basis of any date of death so fixed which is later than that used as a basis for prior settlement."

In summary, the question of the conclusiveness of payments made under the circumstances cited is still somewhat open, but the general practice seems to be to avoid any unnecessary hardship upon the returnee or his erstwhile survivors. It was the point of view of Defense and representatives of this Agency that no useful purpose could be served by seeking to incorporate in the draft additional language directed to this point.

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7. This Office would be happy to provide any additional assistance desired in the interpretation or administration of this legislation.

[Redacted Signature]

Assistant General Counsel

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Attachment

cc: Legislative Council
Director of Personnel
Comptroller
ED/S

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